Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Local Exchange Carriers' Rates,	)	CC Docket No. 94-97, Phase I
Terms, and Conditions for Expanded	)	DA 95-374
Interconnection Through Virtual	)	
Collocation for Special Access and	)	
Switched Transport	)	

AMERITECH REBUTTAL

Ameritech[1] submits this rebuttal in response to comments or oppositions filed with respect to its Direct Case in this proceeding.[2]

I. Overhead Versus Margin.

In its Designation Order,[3] the Commission required local exchange carriers ("LECs") to discuss a comparison of overhead loadings between virtual collocation services and competitive services.[4] In its Direct Case, Ameritech explained that the Commission's current standard that the percentage overhead loadings on interconnection service should be no greater than the percentage margin on

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[1] Ameritech means: Illinois Bell Telephone Company, Indiana Bell Telephone Company, Incorporated, Michigan Bell Telephone Company, The Ohio Bell Telephone Company, and Wisconsin Bell, Inc.

[2] Comments/oppositions relative to Ameritech's Direct Case were filed by MFS, Association for Local Telecommunications Services ("ALTS"), Time Warner Communications Holdings, Inc. ("Time Warner"), MCI Telecommunications Corporation("MCI"), and Teleport Telecommunications Group, Inc. ("Teleport"); oppositions not addressing Ameritech's Direct Case were filed by Kansas City Fibernet, McLeod Telemanagement, Inc., and Electric Lightwave, Inc.

[3] In the Matter of Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection through Virtual Collocation for Special Access and Switched Transport, CC Docket No. 94-97, Phase I, Order Designating Issues for Investigation, DA 95-374 (released February 28, 1995) ("Designation Order").

[4] *Id.* at ¶ 19.

competitive LEC services does not facilitate competition on economic terms.[5] Instead, Ameritech suggested that a more appropriate test of the existence of a "price squeeze" is whether the competitive LEC service is recovering at least the same dollar amount of contribution to common costs (rather than the same percentage of contribution) as is being recovered by the interconnection service.

Teleport took issue with the example cited by Ameritech in support of its position. However, Teleport misconstrued the example. In the example, Ameritech asked the Commission to:

> Assume a "bottleneck" service with a cost of $10 and an overhead loading of 1.5, for a rate of $15. Assume a "comparable" competitive service with a direct cost of $100. In order to protect against a price squeeze, it is only necessary to require that the margin on the competitive service be sufficient to cover the dollar amount of overheads assigned to an equivalent amount of bottleneck service. In this case, if the rate for the competitive service is at least $105, there can be no price squeeze. The competitive service covers all of its direct costs plus the equivalent dollar amount of overheads that are attributed to the equivalent quantity of bottleneck service. The Commission's test, however, would require the competitive service to be priced at least at $150. In reality, such a restriction would require a $45 pricing umbrella under which less efficient competitors could still price their service and still potentially reap a profit.[6]

Teleport claimed that Ameritech's example approved of selling the competitive service "at its direct cost of $100."[7] Teleport complained that Ameritech would call

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[5] Ameritech noted that its current rates for DS1 and DS3 services do not include "overheads" -- as that term has been traditionally used in the regulated ratemaking context. While an overhead loading factor was utilized by Ameritech in setting DS1 and DS3 rates prior to price caps, since that time, the rates have been set in response to the market with appropriate consideration given to the price cap service band limitations. Overheads have not been "loaded" onto the current DS1 and DS3 rates. Rather, the extent to which those rates exceed direct cost is "margin."

[6] Ameritech Direct Case at 7.

[7] Teleport at note 6.

upon the collocator to "make up for the addition $5 cost somewhere else."[8] Obviously, a careful reading of Ameritech's filing shows that that is not the case at all. Ameritech acknowledged the propriety of requiring its own competitive service to cover at least the same $5 of overhead.

ALTS acknowledges Ameritech's position and notes that the test "might define an absolute minimum price floor in a perfectly competitive world."[9] However, ALTS then goes on to claim that the world is not perfectly competitive and that LECs still have opportunities to recover "implicit margin" from other places.[10] Frankly, Ameritech is not sure of ALTS' point in this context. Ameritech's point is simply that, if Ameritech's competitive service rate at least recovers its direct cost and the same contribution to common costs as is recovered in connection with the relevant interconnection service, then there can be no legally or economically objectionable price squeeze.

MFS complains that, although Ameritech's TRP data listed fairly consistent rate/cost ratios, several new tariff rate elements displayed different cost ratios.[11] Focusing on individual rate elements is deceptive since that is simply not the way customers buy service and, therefore, the way price is viewed in the market. Assembling the rate elements into a typical service package gives a more realistic picture of total margin. Attachment A demonstrates this for typical OC-3 service

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[8] *Id.*

[9] ALTS at 12.

[10] *Id.*

[11] MFS at 9-10.

arrangements, including all appropriate rate elements, that would be purchased under the 24- and 48-month options.[12] Similarly, MFS's complaint that Ameritech's OC-12 site diversity option has a low margin must be viewed as nitpicking. This is after all just an "option" that will never be purchased in isolation -- not a competitively essential part of the service that would be competing with a CAP offering.

ALTS similarly claims that the contribution comparison should be not at the service level but at the rate element level because of the alleged "near-term likelihood of greatly increased unbundling for the LECs."[13] Ameritech suggests that it would be inappropriate for the Commission anticipate, in this context, any rule changes that might arise in other proceedings.

Time Warner complained that Ameritech applied lower annual charge factors ("ACFs") to DS1/DS3 services than were applied to virtual collocation services.[14] Time Warner, however, misunderstands the development and use of the annual charge factors displayed in its Table 2. It is true that the annual charge factors submitted with the Direct Case relative to DS1 and DS3 services are different from the annual charge factors applied to interconnection service, but that is simply due to the fact that the ACFs were developed at different periods of time. Had they been developed at the same time, they would have been the same for the same

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[12]Ameritech must still maintain that the appropriate comparison is not percentages but dollars of contribution.

[13]ALTS at 11.

[14] Time Warner at 17-18 and Table 2. Time Warner noted that the Ad Valorem Tax annual charge factor for DS3 cross-connection appears to be high. Time Warner is correct. That is a typographical error. The

categories of investment regardless of whether that investment was used to support interconnection services or DS1 and DS3 services. Ameritech continually reviews and updates the inputs to its annual charge factors to reflect changes in components such as cost of capital, maintenance, and tax rates. Again, these factors have nothing to do with the setting of the current DS1 and DS3 rates. Those rates, presumptively lawful, are limited by the market and the Commission's price cap rules.

II. Nonrecurring Charges.

The parties' confusion about overhead loadings extends to the area of nonrecurring charges. Time Warner claims that Ameritech has failed to justify the application of overhead loadings to nonrecurring charges ("NRCs") for interconnection service because "these loadings are not applied to comparable DS1 and DS3 services."[15] At best, this is a distortion of what Ameritech indicated in its direct case. As Ameritech stated in that filing, the application of overhead loadings to nonrecurring charges for interconnection service is appropriate because it is consistent with the methodology for cost-based rate development that was employed by Ameritech prior to price caps -- including in connection with the development of DS1 and DS3 NRCs.[16] However, since price caps, the level of nonrecurring charges for DS1 and DS3 service is, again, determined by the market

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correct figure should be .0047

[15] Time Warner at 29.

[16] Ameritech Direct Case at 8-9.

and the Commission's price cap rules. There is nothing inherently unreasonable about the recovery of common costs in connection with nonrecurring charges.

In connection with the issue of refunding portions of the overheads associated with nonrecurring charges if interconnection is terminated prior to the end of a service term, MFS indicates its misunderstanding of the overhead development process when it argues that the LECs' position on refusing a refund is unsupportable.[17] MFS claims that LECs incorporate overheads into NRCs by "applying an annual cost factor. This factor assumes that maintenance and administrative costs will be incurred on a regular basis throughout the year."[18] MFS then states that because of this, a refund is appropriate upon premature termination of the service. In fact, annual charge factors are applied to investment, not to determine overheads, but to determine direct costs. The inclusion of overhead allocations in the rates, on the other hand, is designed to recover common costs. Ameritech does not use an annual cost factor to develop overhead allocations. Therefore, MFS's argument that refunds are required is unfounded.

III. Confidential Data.

Finally, the parties addressed Ameritech's (and other LECs') request for confidential treatment of data. First, it is important to clarify that Ameritech submitted on the record, and did not seek confidential treatment of, all cost data associated with its interconnection services -- i.e., the services whose rates are under

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[17] MFS at 23.

[18] *Id.*

investigation in this proceeding. ALTS' characterization of Ameritech's actions as a refusal to provide the required cost support for a "new service"[19] is simply wrong. Similarly, MCI's characterization of the data for which Ameritech seeks confidential treatment as "cost support materials [that are} filed with tariffs [and] are routinely available for public inspection"[20] is erroneous. Rather, Ameritech did seek confidential treatment of newly developed information concerning the forward-looking (not embedded) costs associated with DS1 and DS3 services -- information which in no way played a role in setting the current, presumptively lawful rates for those services. Ameritech seeks confidential treatment of that information because the services to which the information pertains are competitive. It is in this light that the demands of ALTS and Time Warner and MFS and MCI must be viewed.

> Time Warner claims that the Bureau should regard the requests as:
>
> thinly veiled attempts to avoid complying with the Designation Order, thereby depriving TWComm and other interested parties of the ability to prepare and submit meaningful comments on the important issues designated by the Bureau.[21]

In reality, these parties' demand for the information is a thinly-veiled attempt to get at their competitor's cost structure. MCI claims:

> Many potential entrants have specific expertise that can be extended to the Commission in their (sic) effort to assess the lawfulness of the LECs' virtual interconnection rates.[22]

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[19]ALTS at 9-10.

[20]MCI at 8.

[21]Time Warner at 5-6.

[22]MCI at 7.

Ameritech's interconnection costs are on the record. And there is no evidence that the Commission lacks sufficient expertise to appropriately evaluate the data on Ameritech's competitive services. What is certain is that "potential entrants"[23] would not turn down an opportunity to use the regulatory process as a competitive tool either to disrupt Ameritech's (and other LECs') competitive offerings or to gain competitive intelligence. The Commission should decline the invitation to participate in such a misuse of the regulatory process.

Finally, Ameritech must respond to the allegations that it has not justified its request for confidentiality.[24] Attachment B is a copy of the cover letter under which Ameritech submitted the data in question to the Commission. It clearly indicates the reason for the request and the authority the Commission has to grant the request.[25]

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[23]Including MCI, whose MCI Metro affiliate had been certified as an alternative exchange carrier in Detroit and in Wheaton, Illinois, and has applications pending for Chicago, Cleveland, Dayton and Columbus, Ohio.

[24]See, MCI at 6, ALTS at 12

[25]Time Warner (at 5) has asked the Commission to authorize interested parties to obtain confidential data via a protective agreement. Ameritech would have no objection to such an arrangement provided that disclosure would be very limited in terms of the number of representatives of each party who could see the data and provided that the protective agreement was enforceable and enforced by the Commission.

In light of the foregoing, the Commission should conclude this investigation with a finding that there is no reason to reject the Ameritech's interconnection tariff rates, terms and conditions.

Respectfully submitted,

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Dated: April 11, 1995

AMERITECH OC-3 24 MONTH AND 48 MONTH BILLING OPTIONS ATTACHMENT A

24 MONTH OC-3

	LDC	CMT	CM	ADM	TOTAL
1 DEMAND	1	2	10.56	1	
2 MONTHLY COST	$291.75	$337.09	$180.33	$548.53	
3 MONTHLY RATE	$1,527.00	$446.00	$238.00	$1,052.00	
4 TOTAL MONTHLY COST (L1*L2)	$291.75	$674.18	$1,904.28	$548.53	$3,418.74
5 TOTAL MONTHLY RATE (L1*L3)	$1,527.00	$892.00	$2,513.28	$1,052.00	$5,984.28
6 MARGIN (L5/L4)	5.23	1.32	1.32	1.92	1.75

48 MONTH OC-3

	LDC	CMT	CM	ADM	TOTAL
1 DEMAND	1	2	5.5	1	
2 MONTHLY COST	$285.64	$335.71	$179.59	$544.21	
3 MONTHLY RATE	$1,253.00	$385.00	$205.00	$863.00	
4 TOTAL MONTHLY COST (L1*L2)	$285.64	$671.42	$987.75	$544.21	$2,489.02
5 TOTAL MONTHLY RATE (L1*L3)	$1,253.00	$770.00	$1,127.50	$863.00	$4,013.50
6 MARGIN (L5/L4)	4.39	1.15	1.14	1.59	1.61

SOURCE: AMERITECH TRANSMITTAL 863

Attachment B

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Ameritech

Michael S. Pabian
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CONFIDENTIAL

March 21, 1995

HAND DELIVERED

William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

Re: Ameritech Confidential Information
Data Submitted in Connection With Direct Case
CC Docket No. 95-97, Phase I

Dear Mr. Caton:

Ameritech submits the attached information -- Attachment I, Ameritech DS1 and DS3 Recurring Cost Summary; and Attachment II (6 pages), DS1/DS3 TRP sheets -- in connection with its Direct Case filed today in CC Docket 95-97, Phase I. Ameritech requests that the information be treated as confidential and not be disclosed to anyone outside the Commission or anyone inside the Commission who does not have a "need to know." This request for confidentiality is made pursuant to sections 0.457 and 0.459 of the Commission's rules and pursuant to subsection b(4) of the Freedom of Information Act.[1]

Exemption 4 of the Freedom of Information Act protects, in an agency's hands, "trade secrets and commercial or financial information obtained from a person and privileged or confidential."[2] The information in question is clearly "commercial or financial" in nature and is being supplied to the Commission by a legal "person." In determining whether the exemption applies, the only remaining issue is whether the information is privileged or confidential. The United States Court of Appeals for the

[1] 5 U.S.C. § 552(b)(4).

[2] 47 U.S.C. § 552(b)(4).

District of Columbia Circuit has developed a two-pronged test to answer this question: Is disclosure likely 1) to harm substantially the competitive position of the person from whom the information was obtained, or 2) to impair the government's ability to obtain necessary information in the future?[3]

The information constitutes confidential business information which, if disclosed, could substantially harm the competitive position of Ameritech. The information for which confidentiality is requested is specific detailed information on the current investment and direct costs underlying DS1 and DS3 services. Disclosure of this current detailed cost information would unfairly enable Ameritech's competitors to fashion strategies and pricing plans to compete with these services. Possession of a competitor's cost structure would provide a significant competitive advantage to a market participant. Thus, the first prong of the test is satisfied.

However, prevention of disclosure in this case is also appropriate under the second prong of the National Parks test because, as the Commission has recognized, disclosure could impair the Commission's future ability to obtain the data even in those cases in which the Commission has statutory authority to compel production of the information.[4]

Therefore, Ameritech specifically requests that the Commission afford confidential treatment to all of the attached information. If any person (other than agency employees working specifically on the matter in connection with which these documents are submitted) requests an inspection or copy of the information or any portion of it, or requests that any of the information be provided by the Commission, please notify Ameritech sufficiently in advance of any proposed disclosure to permit it to pursue appropriate remedies to preserve the confidentiality of the information.

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[3] See, National Parks and Conservation Association v. Morton, 498 F.2d 765 (D.C. Cir. 1974).

[4] See, In the Matter of Martha H. Platt on Request for Inspection of Records, FOIA Control No. 90-63, FCC 90-323 (released October 3, 1990), 5 FCC Rcd. 5742.

Commission personnel should feel free to call me for any further assistance in reaching a determination concerning the confidential treatment of the attached information.

Sincerely,

Attachment(s)

CERTIFICATE OF SERVICE

I, Deborah L. Thrower do hereby certify that a copy of the foregoing Ameritech Rebuttal has been served on the parties listed on the attached service list, by first class mail, postage prepaid, on this 11th day of April 1995.

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